

**Before the
Federal Communications Commission
Washington, D.C., 20554**

In the Matter of)	
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act of)	
1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	

**COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE**

Introduction and Summary

The New York State Department of Public Service (NYDPS) submits these comments in response to the Federal Communications Commission's (Commission) December 20, 2001 Notice of Proposed Rulemaking (NPRM) in the above captioned proceedings. The Commission seeks comments for the triennial review of its policies on unbundling network elements under § 251(c)(3) of the Act.¹ Comments are also requested on whether unbundling should be required for the deployment of broadband services; and, on what role, if any, the state commissions should play in implementing the Commission's unbundling rules.

The NYDPS supports the Commission's efforts to adopt an on-going process for reevaluating which unbundled network elements (UNEs) must be provided by incumbent local exchange carriers (ILECs) and shares the Commission's objective of encouraging facilities-based competition. In sum, the NYDPS believes that it is premature to remove the UNEs that make up

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.* (the Act).

the UNE-Platform (UNE-P)² because competing local exchange carriers (CLECs) will be “impaired”³ in their ability to compete without the availability of the UNE-P.⁴

Moreover, the Commission should not limit the required unbundling of bottleneck facilities used for the provisioning of “advanced services” (i.e., high-speed Internet access) as long as the ILECs control these facilities. Finally, the Commission should continue to correctly implement § 251(d)(3) of the Act, which permits the states to add elements to the national list of UNEs and to adopt policies that reflect local market conditions provided state requirements are consistent with the Act.

Background

The NYDPS has a history of eliminating barriers to the development of a competitive local exchange market in New York State. New York’s local competition policies date back to the 1980’s.⁵ Most recently, the NYDPS dramatically reduced wholesale UNE prices⁶ and approved a new incentive plan (Plan) for Verizon New York, Inc. f/k/a Bell Atlantic-New York (Verizon).⁷

Among other things, the Plan provides an incentive to stimulate competition for small business customers (defined in New York as customers serving 18 lines or less) wherein Verizon agrees to offer UNE-P for the same period and at the same prices as are available to CLECs

² The UNE-P consists of the network interface device (NID), the loop, the switch port, switching functionality and transport.

³ Under the Commission’s standard, a carrier is impaired if, “taking into consideration the availability of alternative elements outside the Incumbent’s network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier’s ability to provide the services it seeks to offer.” UNE Remand Order, 15 FCC Rcd at 3747-50, ¶¶ 107-16 (UNE Remand Order).

⁴ The NYDPS is prepared to offer comments on markets in New York State, as opposed to nationwide markets.

⁵ Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the state of New York, Memorandum, Opinion and Order, CC Docket No. 99-295 at n. 5 (rel. December 22, 1999).

⁶ Case 98-C-1357, Order on Unbundled Network Element Rates, Proceeding on Motion of the Commission to Examine New York Telephone Company’s Rates for Unbundled Network Elements, (issued January 28, 2002). For example, the statewide average price of the UNE-P – a combination of loop switching and transport – is reduced to \$19.14 from \$27.24. In Manhattan, the monthly wholesale rate for UNE-P was reduced to \$15.35 from \$24.94.

⁷ Case No. 00-C-1945, Order Instituting Verizon Incentive Plan, Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon and to Investigate the Future Regulatory Framework, (issued February 27, 2002).

serving residential customers. Moreover, Verizon is permitted the flexibility to change retail rates to meet competitive pressures, provided service quality remains adequate. Finally, the NYDPS initiated an industry-wide task force to focus on migrating large volumes of customers from Verizon's switches to CLECs' switches more efficiently.⁸

I. It Is Premature to Eliminate the Unbundled Network Element Platform

The Commission seeks comments on whether it should retain, modify or eliminate any of its unbundling rules in light of the changing markets.⁹ The NYDPS shares the Commission's goal of encouraging facilities-based competition. Ultimately, CLECs should rely on their own facilities, using only that portion of the ILECs' network that remains a monopoly. Although competition in New York is developing, it is premature to eliminate the UNE-P requirement until CLECs can migrate large volumes of customers to their own switches more efficiently.¹⁰ There are still major issues that hamper the development of facilities-based competition. Until hot-cuts¹¹ can be performed in much greater volumes, CLECs' lack of access to the UNE-P will materially diminish their ability to provide local service.¹²

More specifically, the hot-cut process is labor-intensive and involves extensive coordination between Verizon and the CLECs. After an end-user contacts a CLEC to switch its existing service from Verizon, the CLEC sends a Local Service Request (LSR) to Verizon. Verizon either questions the request, or accepts it and issues a Local Service Request Completion (LSRC) notice. The order then goes to the Regional CLEC Control Center (RCCC) and the Recent Change Memory Administrative Center (RCMAC). The RCCC verifies the order with the CLEC, verifies an AM or PM dispatch and informs the CLEC of the facilities involved. The RCCC then sends the order to the Work Force Administration (WFA) who schedules a technician to work on the frame. If the customer is keeping his or her number (which will often be the case), Verizon sets a temporary "trigger" to initiate Local Number Portability (LNP) on

⁸ Verizon is required to report back to the NYDPS within six months on ways to improve the process.

⁹ NPRM at ¶ 47.

¹⁰ New York will continue to monitor the need for UNE-P and keep the Commission informed.

¹¹ "Hot-cut" refers to the process of transferring UNE-P customers from Verizon's switches to CLECs' switches.

¹² See footnote 3, *supra*.

the day the order is executed. Prior to the switch date, the frame technician verifies Verizon's and the CLEC's appearances on the Main Distribution Frame (MDF). On the switch date, the RCCC obtains a "go" from the CLEC and, accordingly, advises the frame technician. The frame technician completes the job and notifies the RCCC, which then advises the CLEC of the cut status. Verizon completes the order and removes the temporary LNP trigger.

Verizon provisioned an average of approximately 205,000 orders per month via UNE-P in years 2000 and 2001.¹³ Those orders should increase in 2002 as the CLECs' UNE-P offering is expanded under the Plan.¹⁴ Verizon performed approximately 56,000 hot-cut orders¹⁵ in 2001 or an average of approximately 4,700 hot-cut orders per month.¹⁶ Verizon would need to dramatically increase the number of hot-cut orders per month if UNE-P was terminated and CLEC customers were switched.¹⁷ In fact, if all of the 205,000 UNE-P orders were to become UNE-Loop (UNE-L) orders, Verizon's hot-cut performance would have to improve approximately 4400 percent. Such an improvement would be unlikely absent major changes to streamline the hot-cut process.¹⁸

Moreover, there is no doubt that the local loop is an essential facility that the CLECs cannot economically self-provision or obtain from third-party vendors. Replacement of the local loop is prohibitively expensive and raises major land use problems. While wireless and cable alternatives are promising, they are not sufficiently available to constitute a substitute for the local loop.

¹³ Performance data from Verizon's monthly Performance Assurance Plan (C2C/PAP).

¹⁴ Approximately 27% of Verizon's local access line market in New York are served by competitors (3.5 million access lines). Approximately 1.8 million of those lines are provided via UNE-P, with the vast majority being used to serve residential customers.

¹⁵ An order could consist of multiple lines requiring multiple hot-cuts.

¹⁶ C2C/PAP data.

¹⁷ Moreover, the fact that the hot-cut process impairs the CLECs' ability to provide their own switching is reinforced by the failure of the CLECs to install their own switches during the period they were arguing that the unbundled switching rate was too high.

¹⁸ There are currently 1.8 million lines being served via UNE-P. The 56,000 hot-cut orders in 2001 consisted of approximately 157,000 lines. At that rate, it would take Verizon over 11 years to switch all the existing UNE-P customers to UNE-L. In addition, Verizon would need to perform hot-cuts for new CLEC customers served via UNE-L.

Finally, High-capacity loops should not be eliminated as a UNE. Verizon continues to be the dominant provider of high-capacity loops used to provide service to large volume customers. Even in lower/midtown Manhattan, Verizon facilities (retail and wholesale) still serve over half of all special service circuits.¹⁹ In fact, in upstate New York, Verizon facilities serve almost 90% of such circuits.²⁰

II. The Commission Should Consider Eliminating UNEs in Specific Geographic Areas

The Commission also seeks comments on whether it should adopt a more refined unbundling analysis on the basis of specific services or geographic locations.²¹ The NPRM suggests that competitive alternatives will be available in some areas before others. Consequently, it is likely that individual elements could be appropriately eliminated in some geographically discrete markets before others. Thus, the NYDPS recommends that the Commission establish criteria that contemplate eliminating individual UNEs in limited geographical markets, rather than on a nationwide basis. The metropolitan statistical area (MSA) may be an acceptable size area for certain elements. For other elements, like those that comprise the UNE-P, the Commission should consider smaller areas, such as individual wire centers.²²

III. The Commission Should not Limit the Required Unbundling of Bottleneck Facilities Used in the Provisioning of Advanced Services

The Commission seeks comments on whether it should modify or limit the ILECs' unbundling obligations for wireline broadband services in light of the current markets.²³ The NYDPS has strived to ensure a competitive wireline advanced services market and convened an industry-wide digital subscriber line service (DSL) collaborative in August 1999, to resolve

¹⁹ Case 00-C-2051, Proceeding to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York, Inc., at pp. 6-8 (issued June 15, 2001).

²⁰ Id.

²¹ NPRM at ¶ 36.

²² In Verizon's 1998 Pre-filing Statement, upstate and downstate were differentiated for purposes of sunseting UNE-P pricing. Upstate UNE-P pricing will be available for an additional 2 years because there are fewer competitor owned switches and, competition has been slower to develop.

²³ NPRM at ¶¶ 22-30; 50-53.

numerous issues concerning the provision of DSL.²⁴ It is premature for the Commission to eliminate the unbundling requirements of the ILECs' bottleneck facilities (ie: the local loop/sub-loop) used in the provision of wireline broadband services, regardless of whether the technology being deployed is copper or fiber.

Notwithstanding the success of cable broadband and the increasing popularity of wireless broadband, wireline broadband remains an important and growing market.²⁵ While the face of the competitive DSL industry has changed significantly in the intervening 17 months, the NYDPS' basic assumption remains unchanged: our concern is to ensure that Verizon continues to deploy the bottleneck or monopoly segments of its local network in a manner that maximizes customers' access to new services and competitive choices. In New York, although many of the first-generation DSL competitors have failed, their assets have been purchased, and their customers continue to be served, in large part, by successor competitors. While the wireline ILECs are competing for broadband with cable offerings, CLECs – both old and new – continue to seek access to end-user customers for broadband using the ILECs' infrastructure over the last mile. Consequently, it is premature to relieve the ILECs of their current obligations to offer wholesale access to all the capabilities of the local loop for broadband purposes. Should the Commission withstand the legal challenges,²⁶ only the ILECs will be able to offer wireline-based broadband.

The NYDPS has not considered treatment of fiber to the curb.²⁷ However, we have given considerable attention to the treatment of fiber to the remote terminal. Our concern has been that while today roughly 20% of New York's customers are served using this technology, this proportion is likely to increase, perhaps sharply. Without unbundling requirements that realistically allow CLECs or potential competitors reasonable access to remote terminals, customers will have no choice of wireline broadband providers, their choice of voice providers

²⁴ Case 00-C-0127, Provision of Digital Subscriber Line Services, Opinion No. 00-12 (issued October 31, 2000).

²⁵ Within that sector, competitive access to bottleneck facilities and the remote terminals that serve end-users, especially small business and residential customers, remains critical in New York.

²⁶ Bell Atlantic Tel. Cos. v. FCC, 206 F.3d 1 (D.C. Cir. 2000). Moreover, the Commission's February 15, 2002 NPRM that tentatively concludes that access to the internet is an information service not subject to unbundling may be subject to challenge.

²⁷ NPRM at ¶ 50.

may be curtailed, and they may not be able to enjoy the benefits of wireline broadband at all, should Verizon choose not to provide that service. Accordingly, the NYDPS requires Verizon to provide CLECs the ability to serve their customers DSL where technically feasible.²⁸ The NYDPS found that in order for a data provider to serve customers whose service is carried in part over fiber optic cable, digital subscriber line access modules (DSLAMs) and splitters must be placed at the remote terminal. Requiring CLECs to construct collocation facilities adjacent to Verizon's remote terminals was, in many instances, impracticable and not commercially feasible, as it involved rights of way and extensive construction.²⁹ The NYDPS declined to select a particular method for Verizon to ensure competitors could reach customers, but required such accommodation on a case by case basis. The NYDPS also approved the option of Verizon allowing CLECs to place their line cards in next generation digital loop carrier (DLC) terminals, and making transport available. Finally, the NYDPS approved the option of a wholesale offering of end-to-end broadband resale.

With respect to continued competitor access to the high frequency portion of the loop, the NYDPS required Verizon to allow CLECs offering voice service using UNE-P to provide DSL over the loop – that is line-splitting.³⁰ It found that lack of access to line splitting impaired both voice and data CLECs' ability to provide customers with these desired services (now roughly 20% of the New York residential market). The alternative, providing DSL on a dedicated line basis, is more costly, more technically cumbersome, and more time-consuming to provision.

In sum, it is prohibitively expensive and burdensome for CLECs to provision DSL capabilities without access to Verizon's remote terminals and the ability to line-split. A CLECs ability to obtain these elements elsewhere on a reasonable, commercial basis is not practicable. Without these elements, a CLEC's ability to compete in the broadband market will be impaired.

²⁸ Case 00-C-0127 at pp. 25-27

²⁹ Approximately 15% of Verizon's loops are served by DLC technology, entailing installation of fiber optic cable from the central office to the remote terminal (closer to the end-user) with copper facilities installed from the remote terminal to the end-users' premises.

³⁰ The NYDPS required Verizon to offer packet switching as a UNE when it is technically feasible to place line cards in Verizon's next generation DLC terminals and where this is the only commercially viable method for CLECs to provide end-users DSL.

IV. Congress has preserved the States' Ability to Add to the National List of UNEs and Adopt Consistent Policies that Reflect Local Market Conditions

The Commission also seeks comments on what role, if any, the states should play in the implementation of unbundling requirements for ILECs.³¹ The NYDPS urges the Commission to continue to correctly implement § 251(d)(3) of the Act, which permits states, if they choose, to add to the minimum list of national UNEs and adopt policies that reflect local market conditions that are consistent with the Act. The level of competition in each state is directly affected by which UNEs are available in that state. The analysis to determine which UNEs should be unbundled in a state is fact specific and must consider conditions in each particular market. For example, in New York, we determined that small business customers (defined in New York as customers serving 18 lines or less) should be treated the same as residential customers. Consequently, the sunset date for small business and residential UNE-P is now the same.³² Indeed, the Commission has previously recognized its intention to "... foster an interactive process by which a number of policies consistent with the 1996 Act are generated by the states."³³

Conclusion

The NYDPS supports the Commission's continuing efforts to reexamine its rules for UNEs. The NYDPS opposes eliminating any of the elements that make up the UNE-P at this time. In addition, the Commission should not limit the required unbundling of facilities used in the provision of broadband wireline services. Finally, the Commission should continue to

³¹ NPRM at ¶ 75.

³² In contrast, the Commission found that in the top 50 MSAs local switching was not necessary to serve business customers with 4 or more lines.

³³ UNE Remand Order at ¶¶ 153-159.

correctly implement § 251(d)(3) of the Act, which permits states to add to the national list of UNEs and adopt policies to address their discrete geographic markets consistent with the Act.

Respectfully submitted,

Lawrence G. Malone
General Counsel
Brian Ossias
Assistant Counsel
Public Service Commission
Of The State Of New York
Three Empire State Plaza
Albany, New York 12223-1352

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